IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

OP.No. 22104 of 1999(F)

PETITIONER:

V.SUKUMARAN NAIR, S/O.NARAYANA PANICKER,
EDAKUNI, THEKKUMTHARA POST,
THEKKUMTHARA AMSOM, VYTHIRI TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY

RESPONDENTS:

----

1. **THE TRIBAL DEVELOPMENT OFFICER, KALPETTA, WAYANAD DISTRICT.**
2. **DEPUTY TAHSILDAR (R.R.) VYTHIRI, WAYANAD DISTRICT.**
3. **THE COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM.**
4. **THE GOVERNMENT OF KERALA REP.BY ITS CHIEF SECRETARY, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON 08/02/2007 DELIVERED THE FOLLOWING:

JUDGMENT

NEITHER COUNSEL NOR PETITIONER PRESENT WHEN THE CASE WAS CALLED. HENCE THE OP IS DISMISSED FOR DEFAULT.

8.2.2007 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

ORDER ON CMP. NO.36404/1999 IN O;. 22104/1999

DISMISSED

8.2.2007 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. No.22104 of 1999

.....

Dated this the 27th day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P4 order issued by the Government pursuant to direction contained in Ext.P1 judgment of this court. The petitioner was awarded contract for construction of house for the tribals by the Tribal Development Officer. Payment was provided in stages of construction. Even though petitioner claimed amount and was paid for two stage construction, it was later noticed that no work was done by the petitioner and therefore, revenue recovery was initiated for recovery of Rs.36,960/- in 1983 being the amount paid to the petitioner. When petitioner challenged the recovery proceedings in O.S. No.606/1987 before Munsiff Court, Kalpatta, the same was dismissed. Appeal filed as A.S. No.1/1990 was also dismissed by the Sub Court, Sulthan Bathery holding that breach of contract was admitted by the petitioner and therefore, respondents are entitled to recover the loss sustained by them. Therefore, revenue recovery proceedings were not interfered with. However, when Second Appeal was filed, this court directed revision to be filed to the Government which was disposed of by the Land Revenue Commissioner vide impugned proceeding. Even though counsel for the petitioner raised various contentions that the person who heard the matter is not the person

who issued the order and actual compensation amount is not determined, I do not think any purpose will be served by remanding the matter because the project entrusted to the petitioner was to be completed in 1981. Since Sub Court recorded that petitioner himself admitted breach of contract, the excess drawn by the petitioner for which no work was done by him is certainly recoverable from petitioner. The petitioner has not produced or challenged the original proceedings by which liability is determined at Rs.36,960/-. Since breach of contract is admitted, the amount paid to the petitioner for work not done by him is recoverable with interest. In the circumstances, there is no ground to interfere with Ext.P4 order upholding recovery proceedings. However, since the matter pertains to 1981 and more than 26 years are over, I feel petitioner can be granted full waiver of interest provided entire arrears are paid by 15.5.2007. Since petitioner has produced receipt of payment of Rs.10,000/- subsequent to filing of O.P., petitioner need to pay only balance amount. If liability is settled as above, interest payable will stand waived and if not settled, full amount with interest could be recovered.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms